

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1158

Introduced by Business and Labor Committee: Cunningham, 40;
Chairperson; Burling, 33; Combs, 32; Kremer, 34;
Preister, 5; Schimek, 27; and Wehrbein, 2

Read first time January 18, 2006

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to claims against the state; to amend sections
2 81-8,210, 81-8,212, 81-8,213, 81-8,228, 81-8,239.01,
3 81-8,294, and 81-8,300, Reissue Revised Statutes of
4 Nebraska, and sections 81-8,211 and 81-8,224, Revised
5 Statutes Supplement, 2005; to change provisions relating
6 to the Risk Manager and the State Claims Board and
7 claim procedure; to provide a statute of limitations;
8 to harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-8,210, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-8,210 For purposes of the State Tort Claims Act,
4 unless the context otherwise requires:

5 (1) State agency shall include all departments, agencies,
6 boards, bureaus, and commissions of the State of Nebraska and
7 corporations the primary function of which is to act as, and
8 while acting as, instrumentalities or agencies of the State of
9 Nebraska but shall not include corporations that are essentially
10 private corporations or entities created pursuant to the Interlocal
11 Cooperation Act or the Joint Public Agency Act. State agency shall
12 not be construed to include any contractor with the State of
13 Nebraska;

14 (2) State Claims Board shall mean the board created by
15 section 81-8,220;

16 (3) Employee of the state shall mean any one or more
17 officers or employees of the state or any state agency and shall
18 include duly appointed members of boards or commissions when they
19 are acting in their official capacity. State employee shall not be
20 construed to include any employee of an entity created pursuant to
21 the Interlocal Cooperation Act or the Joint Public Agency Act or
22 any contractor with the State of Nebraska;

23 (4) Tort claim shall mean any claim against the State
24 of Nebraska for money only on account of damage to or loss of
25 property or on account of personal injury or death caused by the

1 negligent or wrongful act or omission of any employee of the state,
2 while acting within the scope of his or her office or employment,
3 under circumstances in which the state, if a private person, would
4 be liable to the claimant for such damage, loss, injury, or death
5 but shall not include any claim accruing before January 1, 1970,
6 and any claim against an employee of the state for money only
7 on account of damage to or loss of property or on account of
8 personal injury or death caused by the negligent or wrongful act or
9 omission of the employee while acting within the scope of his or
10 her employment occurring on or after August 25, 1989; ~~and~~

11 (5) Award shall mean any amount determined by the State
12 Claims Board to be payable to a claimant under section 81-8,211 or
13 the amount of any compromise or settlement under section 81-8,218;
14 and

15 (6) Risk Manager shall mean the Risk Manager appointed
16 under section 81-8,239.01.

17 Sec. 2. Section 81-8,211, Revised Statutes Supplement,
18 2005, is amended to read:

19 81-8,211 Authority is hereby conferred upon the Risk
20 Manager and the State Claims Board, acting on behalf of the State
21 of Nebraska, to consider, ascertain, adjust, compromise, settle,
22 determine, and allow any tort claim. Any claimant dissatisfied
23 with a decision of the Risk Manager may make application for
24 review of the decision by the State Claims Board by filing an
25 application for review with the Risk Manager within sixty days

1 after receipt of notice of the Risk Manager's decision. If any
2 tort claim is compromised, settled, or allowed in an amount of
3 more than five thousand dollars, the approval of the State Claims
4 Board is required. If any tort claim is compromised, settled, or
5 allowed in an amount of more than ~~five~~ ten thousand dollars, the
6 unanimous approval of all members of the State Claims Board shall
7 be required. If any tort claim is compromised, settled, or allowed
8 in an amount of more than twenty-five thousand dollars, the claim
9 shall also be submitted for approval by the district court for
10 Lancaster County. When approval of the district court is required,
11 the Attorney General shall make application for such approval and
12 shall file with the application a complete record of the action
13 of the State Claims Board on such claim. The claimant may join
14 in such application, and if the claimant does so, the court may
15 proceed to act on the application without further notice to either
16 party. If the claimant does not join in the application, the court
17 shall require actual notice to all parties before acting on the
18 application. The court may deny the application for any legal and
19 sufficient reason or may direct the State Claims Board to conduct
20 further hearings on any material issues. The fees of the clerk
21 of the district court for filing, docketing, and indexing such
22 application shall be five dollars.

23 Sec. 3. Section 81-8,212, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 81-8,212 All tort claims shall be filed with the Risk

1 Manager in the manner prescribed by the State Claims Board. The
2 Risk Manager shall immediately advise the Attorney General of the
3 filing of any claim. It shall be the duty of the Attorney General
4 to cause a complete investigation to be made of all such claims and
5 serve as a legal advisor to the Risk Manager and the State Claims
6 Board on all such claims. In any suit brought under the State Tort
7 Claims Act, service of process shall be made in the manner provided
8 for service of a summons in section 25-510.02.

9 Sec. 4. Section 81-8,213, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 81-8,213 No suit shall be permitted under the State Tort
12 Claims Act unless the Risk Manager or the State Claims Board has
13 made final disposition of the claim, except that if the ~~board~~ Risk
14 Manager or the State Claims Board does not make final disposition
15 of a claim within six months after the claim is made in writing
16 to the board, the claimant may, by notice in writing, withdraw the
17 claim from consideration of the board and begin suit under such
18 act.

19 Sec. 5. Section 81-8,224, Revised Statutes Supplement,
20 2005, is amended to read:

21 81-8,224 (1) Any award to a claimant and any judgment
22 in favor of a claimant under the State Tort Claims Act shall
23 be certified by the Risk Manager or the State Claims Board to
24 the Director of Administrative Services who shall promptly issue
25 a warrant for payment of such award or judgment out of the Tort

1 Claims Fund or State Insurance Fund, as appropriate, if sufficient
2 money is available in the fund, except that no portion in excess
3 of fifty thousand dollars of any award or judgment shall be paid
4 until such award or judgment has been reviewed by the Legislature
5 and specific appropriation made therefor. All awards and judgments
6 which arise out of the same facts and circumstances shall be
7 aggregated for the purpose of determining whether such awards
8 and judgments shall be reviewed by the Legislature and specific
9 appropriation made therefor.

10 (2) Any award, judgment, or associated costs on a
11 claim which is covered by liability insurance or by group
12 self-insurance, the amount of which falls within the applicable
13 policy's self-insured retention, shall be paid from the State
14 Insurance Fund.

15 (3) Delivery of any warrant in satisfaction of an award
16 or judgment shall be made only upon receipt of a written release by
17 the claimant in a form approved by the State Claims Board.

18 Sec. 6. Section 81-8,228, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 81-8,228 The court rendering a judgment for the claimant
21 under the State Tort Claims Act, the Risk Manager or the State
22 Claims Board making an award under section 81-8,211, or the
23 Attorney General settling a claim under section 81-8,218 shall
24 determine and allow reasonable attorney's fees and expenses, to be
25 paid out of but not in addition to the amount of judgment or award

1 recovered, to the attorneys representing the claimant.

2 Sec. 7. Section 81-8,239.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 81-8,239.01 (1) For purposes of sections 81-8,239.01 to
5 81-8,239.08, unless the context otherwise requires, the definition
6 of state agencies found in section 81-8,210 shall apply, except
7 that such term shall not include the Board of Regents of the
8 University of Nebraska.

9 (2) There is hereby established a division within the
10 Department of Administrative Services to be known as the risk
11 management and state claims division. The division shall be headed
12 by the Risk Manager who shall be appointed by the Director of
13 Administrative Services. The Director of Administrative Services
14 may appoint as Risk Manager any person who has successfully
15 completed a four-year program at an accredited college or
16 university and who has not less than three years of relevant
17 experience. The division shall be responsible for the Risk
18 Management Program, which program is hereby created. The program
19 shall consist of the systematic identification of exposures to risk
20 of loss as provided in sections 11-201 to 11-203, 13-911, 25-2165,
21 43-1320, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104,
22 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226,
23 81-8,233, 81-8,239.01 to 81-8,239.08, and 81-8,300 and shall
24 include the appropriate methods for dealing with such exposures
25 in relation to the state budget pursuant to such sections. Such

1 program shall be administered by the Risk Manager and shall include
2 the operations of the State Claims Board and other operations
3 provided in such sections.

4 (3) Under the Risk Management Program, the Risk Manager
5 shall have the authority and responsibility to:

6 (a) Employ any personnel necessary to administer the Risk
7 Management Program;

8 (b) Develop and maintain loss and exposure data on all
9 state property and liability risks;

10 (c) Develop and recommend risk reduction or elimination
11 programs for the state and its agencies and establish, implement,
12 and monitor a statewide safety program;

13 (d) Determine which risk exposures shall be insured and
14 which risk exposures shall be self-insured or assumed by the state;

15 (e) Establish standards for the purchase of necessary
16 insurance coverage or risk management services at the lowest
17 costs, consistent with good underwriting practices and sound risk
18 management techniques;

19 (f) Be the exclusive negotiating and contracting agency
20 to purchase insurance or risk management services and, after
21 consultation with the state agency for which the insurance or
22 services are purchased, enter into such contracts on behalf of
23 the state and its agencies, officials, and employees to the extent
24 deemed necessary and in the best interest of the state, and
25 authorize payment for such purchase out of the appropriate funds

1 created by section 81-8,239.02;

2 (g) Determine whether the state suffered a loss for which
3 self-insured property loss funds have been created and authorize
4 and administer payments for such loss from the State Self-Insured
5 Property Fund for the purpose of replacing or rebuilding state
6 property;

7 (h) Perform all duties assigned to the Risk Manager
8 under the Nebraska Workers' Compensation Act and sections 11-201 to
9 11-203, 81-8,239.05, 81-8,239.07, and 84-1601 to 84-1615;

10 (i) Approve the use of risk management pools by any
11 department, agency, board, bureau, commission, or council of the
12 State of Nebraska; and

13 (j) Recommend to the Legislature such legislation as may
14 be necessary to carry out the purposes of the Risk Management
15 Program and make appropriation requests for the administration of
16 the program and the funding of the separate funds administered by
17 the Risk Manager.

18 (4) No official or employee of any entity created
19 pursuant to the Interlocal Cooperation Act or the Joint Public
20 Agency Act shall be considered a state official or employee for
21 purposes of sections 81-8,239.01 to 81-8,239.06.

22 Sec. 8. Section 81-8,294, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 81-8,294 Sections 81-8,294 to 81-8,301 and section 9 of
25 this act shall be known and may be cited as the State Miscellaneous

1 Claims Act.

2 Sec. 9. Except as provided in section 25-213, every
3 miscellaneous claim permitted under the State Miscellaneous Claims
4 Act shall be forever barred unless the claim is filed with the Risk
5 Manager within two years after the time at which the claim accrued.

6 Sec. 10. Section 81-8,300, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 81-8,300 After investigation, the Risk Manager or the
9 State Claims Board shall either approve, approve with conditions
10 or limitations, or disapprove of each claim or request and append
11 to the claim or request a concise statement of the facts brought
12 out in such investigation upon which its approval or disapproval
13 is based. If any claim is approved in an amount of more than
14 five thousand dollars, the approval of the State Claims Board
15 is required. Such claim or request, together with the original
16 papers supporting it and the appended statement, shall be filed
17 with the Risk Manager in the manner prescribed by the State Claims
18 Board. The Risk Manager shall promptly notify each claimant of the
19 decision by the Risk Manager or the State Claims Board on his or
20 her claim by regular mail. The notification shall include (1) the
21 decision of the Risk Manager or the State Claims Board, (2) a
22 ~~statement that a dissatisfied claimant~~ a statement that a claimant
23 dissatisfied with the decision of the Risk Manager may have his
24 or her claim reviewed by the State Claims Board or a statement
25 that a claimant dissatisfied with the decision of the State Claims

1 Board may have his or her claim reviewed by the Legislature
2 upon application, (3) the procedure for making an application for
3 review, and (4) the time limit for making such application.

4 ~~If the claimant is dissatisfied with the decision,~~ If the
5 claimant is dissatisfied with the decision of the Risk Manager,
6 he or she may file an application for review by the State Claims
7 Board. If the claimant is dissatisfied with the decision of the
8 State Claims Board, he or she may file an application for review by
9 the Legislature. The application for review shall be filed with the
10 Risk Manager in the manner prescribed by the State Claims Board.
11 The application for review shall be filed within sixty days after
12 the date of the decision ~~by the State Claims Board on the claim~~
13 which is being reviewed.

14 Each claim which has been approved or for which an
15 application for review with the Legislature has been filed and each
16 request referred to in section 81-8,297 shall be delivered by the
17 Risk Manager to the chairperson of the Business and Labor Committee
18 of the Legislature at the next regular session of the Legislature
19 convening after the date of the decision of the board. The Risk
20 Manager may direct the payment by the state agency involved of any
21 claim not in excess of ~~two~~ five thousand dollars if such payment
22 is agreed to by the head of the agency involved. The State Claims
23 Board may direct payment by the state agency involved of any claim
24 not in excess of ~~ten~~ fifty thousand dollars if such payment is
25 agreed to by the head of the agency involved and the agency has

1 sufficient funds to pay the claim. If claims approved by the Risk
2 Manager or State Claims Board arise out of the same facts and
3 circumstances, they shall be aggregated. If the Risk Manager or
4 State Claims Board does not direct the payment of a claim as set
5 forth in this section or the claim exceeds the dollar limitations
6 set forth in this section, the claim shall be reviewed by the
7 Legislature and an appropriation made therefor if appropriate. The
8 Risk Manager shall report all claims and judgments paid under the
9 State Miscellaneous Claims Act to the Clerk of the Legislature
10 and the Chairperson of the Business and Labor Committee of the
11 Legislature. The report shall include the name of the claimant, a
12 statement of the amount claimed and paid, and a brief description
13 of the claim including the agency and program or activity under
14 which the claim arose. Any member of the Legislature may receive a
15 copy of the report by making a request to the Risk Manager.

16 Sec. 11. Original sections 81-8,210, 81-8,212, 81-8,213,
17 81-8,228, 81-8,239.01, 81-8,294, and 81-8,300, Reissue Revised
18 Statutes of Nebraska, and sections 81-8,211 and 81-8,224, Revised
19 Statutes Supplement, 2005, are repealed.